

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENNIS STIEF,)
)
Petitioner,)
) Civil Action
v.) No. 13-cv-00059
)
WARDEN SCI ROCVIEW,)
ATTORNEY GENERAL OF PA)
THE DISTRICT ATTORNEY OF BERKS)
COUNTY)
)
Respondents)
)

O R D E R

NOW, this 1st day of May, 2015, upon consideration of the following documents:

Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, which petition was filed in the United States District Court for the Middle District of Pennsylvania December 10, 2012 and transferred to the United States District Court for the Eastern District of Pennsylvania January 3, 2013 ("Petition for Habeas Corpus") (Document 1-2), together with

Order signed by United States District Judge Robert D. Mariani of the Middle District of Pennsylvania and filed January 3, 2013 (Document 1), and

Report and Recommendation of United States Magistrate Judge Susan E. Schwab, filed December 12, 2012 (Document 1);

Respondents' Answer to Petition for Writ of Habeas Corpus, which answer was filed March 7, 2014 (Document 7);

Petitioner's Reply to Respondent[s'] Response to Petition for Writ of Habeas Corpus, which reply

was filed June 16, 2014 ("Petitioner's Reply") (Document 16);

Report and Recommendation of United States Magistrate Judge M. Faith Angell, dated August 11, 2014 and filed August 13, 2014 ("R&R") (Document 19);

Petitioner's Motion to Strike and Set Aside the Report and Recommendation of Magistrate Judge M. Faith Angell and Grant Petitioner's Reconsideration of His Habeas Appeal, which motion was filed October 31, 2014 (Document 27) ("Petitioner's Motion to Strike"), together with

Memorandum in Support of Petitioner['s] Petition for Writ of Habeas Corpus ("Petitioner's Memorandum");

and after de novo review of the record in this matter; it appearing that Magistrate Judge Angell's Report and Recommendation correctly determined the legal and factual issues presented in this case,

IT IS ORDERED that Magistrate Judge Angell's Report and Recommendation is approved and adopted.¹

¹ The extent of review of a Magistrate Judge's Report and Recommendation is committed to the discretion of the district court. Jozefick v. Shalala, 854 F.Supp. 342, 347 (M.D.Pa. 1994). However, the district court must review de novo those portions of the Report and Recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(c). The court may "accept, reject, or modify, in whole or in part, the magistrate's findings or recommendations." Brophy v. Halter, 153 F.Supp.2d 667, 669 (E.D.Pa. 2001)(Padova, J.); Rule 72.1(IV)(b) of the Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania.

Furthermore, district judges have wide latitude regarding how they treat recommendations of the magistrate judge. See United States v. Raddatz, 447 U.S. 667, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980). Indeed, by providing for a de novo determination, rather than a de novo hearing, Congress intended to permit a district judge, in the exercise of the court's sound discretion, the option of placing whatever reliance the court chooses to place on the

(Footnote 1 continued):

IT IS FURTHER ORDERED that the portion of Magistrate Judge Angell's Report and Recommendation which recites the background, procedural history, and facts is approved and adopted.

IT IS FURTHER ORDERED that the portion of Magistrate Judge Angell's Report and Recommendation which discusses statutory tolling, equitable tolling, and that portion of the Antiterrorism and Effective Death Penalty Act of 1996² which amends the habeas corpus statute of limitations (28 U.S.C. § 2244(d)) is approved and adopted.

IT IS FURTHER ORDERED that petitioner's objections to the Report and Recommendation of Magistrate Judge Angell are overruled.³

(Continuation of footnote 1):

magistrate judge's proposed findings and conclusions. I may accept, reject, or modify, in whole or in part, any of the findings or recommendations made by the magistrate judge. Id.

As more fully discussed in the subsequent footnotes, below, I approve and adopt Magistrate Judge Angell's Report and Recommendation and overrule petitioner's objections to the Report and Recommendation.

² Pub.L.No. 104-132, §§ 101-108, 110 Stat. 1214, 1219 (1996), effective April 24, 1996.

³ Petitioner makes two objections to Magistrate Judge Angell's R&R. First, he objects to the R&R, arguing that his constitutional rights were violated by ineffective assistance of counsel. Second, petitioner objects to the findings in the R&R, arguing that his constitutional rights were violated by the trial judge, Scott D. Keller, Judge of the Court of Common Pleas of Berks County, Pennsylvania, and Assistant District Attorney Eric Fabrizio.

Upon review of Petitioner's Motion to Strike, Petitioner's Memorandum, Petitioner's Reply, and petitioner's Petition for Habeas Corpus,

(Footnote 3 continued):

IT IS FURTHER ORDERED that petitioner's Petition for Habeas Corpus is dismissed as untimely.

IT IS FURTHER ORDERED that because petitioner has not met statutory requirements to have his case heard, and no reasonable jurist could find this procedural ruling debatable, a certificate of appealability is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall close this civil action for statistical purposes.

BY THE COURT:

/s/ JAMES KNOLL GARDNER
James Knoll Gardner
United States District Judge

(Continuation of footnote 3):

I conclude that the contentions included in petitioner's objections are nothing more than a restatement of the claims outlined in his initial petition and reply memorandum to Magistrate Judge Angell. See Morgan v. Astrue, 2009 WL 3541001 (E.D.Pa. Oct. 30, 2009)(Buckwalter, S.J.). Moreover, upon review of Magistrate Judge Angell's Report and Recommendation, together with a de novo review of the matter, I conclude that the Report and Recommendation correctly determined the legal issues raised by petitioner.

Therefore, I approve and adopt Magistrate Judge Angell's Report and Recommendation, and overrule petitioner's objections to the Report and Recommendation.